



THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN

AUSTIN 11, TEXAS

~~HERBERT H. SHERMAN~~
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Opinion No. 0-4888

Re: Payment of 50% of State ad valorem taxes of San Jacinto and Walker Counties donated to San Jacinto River Conservation and Reclamation District by H. B. 1079, Acts 46th Legislature upon decision by Texas Supreme Court that S. B. 89, Acts 46th Legislature remitting all State ad valorem taxes of said counties is unconstitutional.

Dear Sir:

Senate Bill No. 89, Acts 1939, 46th Legislature provided that so much of the State ad valorem taxes in ten east Texas counties, including San Jacinto and Walker Counties, should be donated to the respective counties as might be necessary to reimburse said counties for the loss of tax revenues occasioned by the purchase of large acreage of cut over timber lands by the Federal Government in said counties.

House Bill No. 1076, Acts 1939, 46th Legislature provided for the donation of fifty per cent of the State ad valorem taxes in San Jacinto and Walker Counties and part of Liberty County, for ten years from September 1, 1939, to the San Jacinto River Conservation and Reclamation District, and said Act contained the following provision:

" . . . provided, however, that the taxes herein donated and granted in the Counties of Walker and San Jacinto shall not apply, nor be allocated or donated in this Act, until the provisions of Senate Bill No. 89, passed at the Regular Session of the Forty-sixth Legislature, become inoperative "

Senate Bill No. 89 was made inoperative by the decision of the Commission of Appeals of Texas in the case of State v. Angelina County, et al, 136 Tex. 247, 150 S.W. (2d) 379, wherein the Court held said Act to be unconstitutional.

You advise us that the Tax Assessor-Collectors of San Jacinto and Walker Counties have since September 1, 1939, remitted all of the State ad valorem taxes from these two counties to you, and that the same have been deposited in the State Treasury. You inquire "what procedure shall be followed in remitting to such districts the taxes that have been paid into the State Treasury?"

It is our opinion that the donation of 50% of State ad valorem taxes from San Jacinto and Walker Counties to the San Jacinto River Conservation and Reclamation District as provided by H. B. No. 1076 is a valid exercise of legislative authority. Brazos River Conservation and Reclamation District v. McCraw, 126 Tex. 506, 91 S.W. (2d) 665. When S. B. 89 was declared unconstitutional, 50% of the State ad valorem taxes collected in San Jacinto and Walker Counties should have been paid to the treasurer of the San Jacinto River Conservation and Reclamation District as provided by H. B. No. 1076. Such payment should hereafter be so made.

But as to the moneys heretofore paid into the State Treasury--though erroneously--these cannot now be withdrawn and paid over to the San Jacinto Conservation and Reclamation District without a specific appropriation by the Legislature authorizing such payment. Manion v. Lockhart, 131 Tex. 175, 114 S.W. (2d) 216.

APPROVED NOV. 20, 1942

Yours very truly,

/s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

ATTORNEY GENERAL OF TEXAS

By /s/ Walter R. Koch
Walter R. Koch
Assistant

APPROVED OPINION COMMITTEE
BY /s/ B.W.B. CHAIRMAN

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